

REMARKS

Claims 8-16 are currently pending in the application. Claims 8, 9, 11, and 12 are amended. No new matter is presented. Applicants thank the Examiner for indicating that claims 15 and 16 recite patentable subject matter. In view of the above amendments and the following remarks, Applicants request the favorable consideration and allowance of claims 8-16.

The Examiner rejected claims 9 and 11-13 as being unpatentable over 35 U.S.C. § 112, second paragraph. The Examiner rejected claim 8 as being unpatentable over 35 U.S.C. § 102: claim 8 as being anticipated by Butcher et al. (U.S. Patent No. 1,979,447). The Examiner further rejected claims 8, 10 and 14 under 35 U.S.C. § 103 indicating that claims 8, 10 and 14 are unpatentable over Stokes (U.S. Patent No. 2,907,410) in view of S.E. Bates et al. (U.S. Patent No. 1,880,672). Applicants respectfully traverse the rejections of claims 8-14

The Examiner rejected claims 9, 11, and 12 under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner objected to using the language "corresponds" in line claim 9, because it is not clear how the I-shaped plate is related to the minimum distance between the open-edged cutouts. The Examiner also objected to using the language "particularly" in claims 11 and 12. Applicants have amended these claims to remove the ambiguities. The amendments to claims 9, 11, and 12 are merely cosmetic in nature and do not affect the scope of the claims. In addition, no new matter is presented. In particular, claim 9 corresponds to original claim 2 (see original English translation of application submitted on July 1, 2002) and the specification discloses that:

The width of the web of this I-shaped plate corresponds to the minimum distance between the open-edged cutouts of the plate having the open-edged cutouts located opposite one another. When the cover plate is constructed as a thin plate and is highly elastic, this cover plate is held down by the I-plate at those places where elasticity is not required for lifting up from the open-edged cutouts. (See page 1, line 30 – page 2, line 5 of the substitute specification filed July 1, 2002)

As a result, Applicants request the withdrawal of the rejection of claims 9, 11 and 12 under 35 U.S.C. 112, second paragraph.

The Examiner rejected claim 8 under 35 U.S.C. 102(b) as being anticipated by Butcher. The Examiner takes the position that Butcher teaches or suggest all the features recited in claim 8. Applicants respectfully disagree.

Claim 8 recites a device for distributing lubricants in grooved rails having an elongated plate adapted to be in the groove of the rail and having a plurality of cutouts at least along one longitudinal edge. The cutouts start at the longitudinal edge and are open edged. The lubricant is supplied to the cutouts so that the lubricant flows out through the open edges of the cutouts and the open-edged cutouts of the elongated plate are covered by a cover plate which is constructed so as to be elastic at least in the covering area.

The claimed invention provides a grooved rail lubricating device for improving the uniformity of the lubricant delivery while preventing clogging. The claimed invention achieves these goals by using a combination of elongated plates with flow dividers and by delivering the lubricant through open-edged longitudinal cutouts in one of the plates. The applied reference neither teaches the features of the claimed invention nor the benefits and advantages provided by the claimed invention.

Butcher is directed to a method for improving the means for reducing the wear on rails at curves on a railway or tramway track. More specifically, Butcher discloses a lubricant container 10 mounted in metal trough 11 and supported by steel wires 12 which are adjustably secured to spring plates 13 and fixed to supports 14 on the track bed.

However, Butcher fails to teach or suggest all the features of the claimed invention. In particular, Butcher fails to teach or suggest an elongated plate arranged in the groove of the rail and having a plurality of cutouts at least along one longitudinal edge. Even more specifically, Butcher fails to teach or suggest any type of groove in the rail.

The Examiner has construed the rail in the cited references to have a groove. Applicant respectfully disagrees with the Examiner's position. First, it should be noted that there are two different types of rail. The first is a rail having a groove extending in a longitudinal direction and arranged in its head. The second type of rail is a solid rail head having a continuous surface at the top (not interrupted by a groove). These types of non-grooved rails are typically known as vignol rails, which are quite different. In addition, the Examiner takes the position that grooved rails are not positively recited.

The claimed invention as recited in claim 8 provides a device for distributing lubricants in grooved rails, and an elongated plate is arranged in the groove. Applicant has amended claim 8 to read "an elongated plate adapted to be arranged in the groove of the rail" to make it clear that it is **adapted** to be used in the groove of the rail. Although the grooves are not positively recited as a claim element, the claim does require a plate that is **adapted to**

be arranged inside the groove." The Examiner indicates that the lubricating devices as taught in the cited references are the type applied to grooved rails. Applicants respectfully disagree. The vignol rails are not grooved in Butcher.

As admitted by the Examiner, Butcher merely discloses grooves in the rail head and not the rail itself. Furthermore, the side walls of a groove are not lubricated in the cited reference. The lubrication process as taught in Butcher is directed to the wheel flange. In other words, the wheel flange is lubricated not on the side wall of a groove as claimed in the present invention. Applicants respectfully submit that since Butcher fails to teach or suggest grooved rails, the reference fails to teach suggest all the features recited in claim 8. Accordingly, Applicant requests the withdrawal of the rejection of claim 8 under 35 U.S.C. 102(b).

Claims 8, 10, and 14 were rejected under 35 U.S.C. 103(a) being unpatentable over Stokes in view of Bates. The Examiner takes the position that the combination of the cited references teach or suggest all the features recited in claims 8, 10, and 14. Applicants respectfully disagree.

Stokes provides a lubricant system positioned in the inner flange of a train rail for applying a lubricant to the flange though out a desired length of the rail. A reservoir is provided for containing a lubricant and the lubricant is pumped through a conduit to a lubricant applying means whereby the lubricant is then applied to the inner flange of the train rail.

However, Stokes does not teach or suggest rails having grooves. The Examiner admits that there are no grooves provided in the rails but rather in the rail heads. Stokes does not teach a plate has been adapted to be arranged in the groove of the rail and having a plurality of cutouts at least along one longitudinal edge.

Bates discloses a wheel flange oiler. More specifically, the Examiner utilizes Bates to disclose a cover plate being elastic. In Figure 3 of Bates, a plate 24 is shown having cutouts that open outward. More specifically, the Bates reference teaches depressions ("conduits") along the flat surface of the plate. The reference does not teach cutouts that have open edges as recited in claim 8. The Bates depressions are not along the longitudinal edge because the flat side of the elongated plate 8 should not be broadly construed to be the longitudinal "edge." The depressions in Bates start at the longitudinal edge—Figure 6 of Bates shows that the depressions 14-20 do not come in contact with the longitudinal edges—the depressions

begin and terminate within the flat surface of the plate. Thus, the combination of Stokes and Bates fail to teach or suggest the feature of cutouts stating at the longitudinal edge and being open-edged, and the lubricant being supplied to the cutouts so that the lubricant flows out through the open edges of the cutouts.

The Stokes and Bates references disclose lubricating device for a vignol rails not grooved rails. Also, the lubricant is applied to one of the outer (side) surfaces of the head of the vignol rail rather than to the side walls of a groove as recited in claim 8. Finally, regarding the Stokes reference, the reference does not teach or suggest as to how the punch-outs in the plate 36 cooperate with the "groove". The lubricant is conveyed to the outer side wall of the rail 18 via the V-shaped punch-outs of the plate 36. Since Stokes fail to teach grooves, as a result, there is not teaching or suggestion of a feature that includes a plate that cooperates with "groove". Accordingly, the cited references fail to teach or suggest the features of the claimed invention as recited in claim 8.

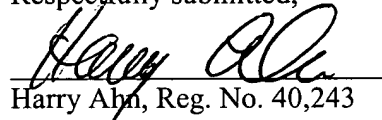
Claim 10 is dependent upon claim 8, therefore it is submitted that claim 10 likewise recite patentable subject matter for at least the reasons mentioned above.

In regard to claim 14, the references merely disclose a cone cooperating with a corresponding conical bore hole, for purpose of sealing. However, the present invention provides rails which are subject to vibratory loads therefore it is necessary to maintain tightness at the point where the lubricant is supplied to the actual lubricating device. Conical elements such as are described in the present invention are suitable for the purposes of the claimed invention. However, if a leak should occur, it can easily be eliminated by tightening one of the conical elements which is moved in a direction of the neighboring conical element. It should also be noted the Examiner takes Official Notice that cone shaped nipple fittings are well know in the art. However, Applicants submit that its not the nipple by itself that is being claimed. It is a nipple with a male cone which is inserted and a female cone corresponding to the male cone that is being claimed. In addition, Applicants submit that since claim 14 is dependent upon claim 8, which recites patentable subject matter, claim 14 likewise recites patentable subject matter for at least the reasons mentioned above.

Dependent claims 9-14 are all dependent on independent claim 8. Applicants submit that, as such, claims 9-16 are patentable by virtue of their dependence from independent claim 8, which is believed by the Applicants to define patentable subject matter.

Based upon the above amendments and remarks, Applicants respectfully request reconsideration of this application and its earlier allowance. Claims 8, 9, 11, and 12 have been amended. No new matter is presented. Should the Examiner feel that a telephone conference with Applicant's attorney would expedite the prosecution of this application, the Examiner is urged to contact him at the number indicated below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Harry Ahn", is written over a horizontal line.

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